dinary use to which it put. *Held*, that where a sewer under the control of a city becomes obstructed by ordinary use, and an abutting owner's property is injured thereby, a presumption of negligence arises calling upon the defendant for an explanation, and upon failure to show that watchfulness and care had been exercised to keep the sewer in proper condition, a finding of negligence would be sustained.

This case is in accord with the majority of decisions which hold that when a sewer has been determined upon and is constructed, the duties of constructing it properly and keeping it in good condition and repair are maintained, and that negligence in the performance of those duties will render the city liable for damages resulting therefrom. *Mills* v. *City of Brooklyn*, 32 N. Y. 489; *Boston* v. *City of Syracuse*, 37 N. Y. 54; *Mayor* v. *Furze*, 3 Hill 612; *Horn* v. *Burnhoof*, Ct. Ap. Conn.

MUNICIPAL CORPORATIONS—SPECIAL ASSESSMENTS—CONSTITUTIONALITY—ZELURDER V. BARBER ASPHALT PAVING CO., 106 Fed. 103.—A statute, whereby municipal corporations are given the right to assess abutting property owners for the total cost of street improvements without any opportunity first being given for an examination into the question of benefits, is unconstitutional.

It has long been settled that municipalities may have the legal power conferred upon them to assess the cost of street improvements against the property located in the neighborhood of such improvements. *Ill. C. R. R. Co.* v. *Decatur*, 147 U. S. 190; *Banman* v. *Ross*, 167 U. S. 548. Though such assessments are a form of taxation, yet even there the power of the legislature is not extended so far that it may authorize the taking of property without benefit being conferred on those assessed. The present case follows closely and relies almost absolutely on *Village of Norwood* v. *Baker*, 172 U. S. 269.

NEGLIGENCE—DEATH OF HORSE—FRIGHT.—LEE V. CITY OF BURLINGTON, 85 N. W. 618 (Ia.).—The negligent operation of a street roller so frightened a horse that it dropped dead. *Held*, no recovery from the city.

This is an unusual case and involves a very nice point of law. It is a settled rule, as to human beings, that no recovery can be had for injuries resulting from fright, where no immediate personal injury is received. *Ewing* v. *Railroad Co.* (Pa. Sup.), 23 Atl. 340; *Spade* v. *Railroad Co.* (Mass.), 47 N. E. 88. The court considers the same rule to be applicable to animals.

RAILROADS—FIRES—BURDEN OF PROOF—IMPROVED APPLIANCES.—WHITE V. NEW YORK, P. & N. R. Co., 38 S. E. 180.—*Held*, when a fire is caused by sparks thrown from a locomotive, that if it appears that the company owning the locomotive has discharged its duty by providing and keeping in repair the most approved appliances for preventing the throwing of sparks, there could be no recovery for damages caused thereby.

Fire caused by sparks from a locomotive is *prima facie* evidence of negligence. *R. R.* v. *Rogers*, 76 Va. 457. The using and keeping in repair of approved appliances is sufficient to rebut the presumption of negligence. *Kimball* v. *Borden*, 44 S. E. 45.

WATERS AND WATER COURSES—DAMS—OVERFLOW—PRESCRIPTIVE RIGHT.—CHARNEY V. SHAWNO WATER POWER, &c., Co., 85 N. W. 507 (Wis.).—